

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3241 to 3256 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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VARELI WEAVES PVT. LTD.

Versus

DY. COMMISSIONER OF INCOME-TAX

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Appearance:

MR JP SHAH for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 24/11/98

ORAL JUDGEMENT

1. All these Special Civil Applications list of which is annexed as schedule to this order, raise a common issue in similar set of facts relating to each case, hence they are being heard and decided together by a common order.

2. The dispute in each case relates to initiation of proceedings for reopening assessment for the assessment year 1984-85/85-86 by issuing notice under Section 148 in March 1991 and the principal contention raised in all these cases is whether the proceedings have been initiated within the period prescribed under the Act. It is urged by Mr. J.P. Shah, learned counsel for the petitioner assessee in all these cases, that there has been no failure on the part of the assessee to make a return under Section 139 or failure to make a return in response to the notice issued under subsection (1) to Section 142 or under Section 148 nor there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the assessment years in question. That being so, assessment for these assessment years having been duly completed, proceedings for reassessment, if any, could not have been initiated, after the expiry of 4 years from the end of relevant assessment year. Assessment year 1984-85 closes on 31.3.1985 and assessment year 85-86 closes on 31.3.1986. Notices issued in March 1991 are clearly beyond four years from the end of the relevant assessment year of which proceedings for reassessment are sought to be initiated in each of these cases.

3. In pursuance of notice, no reply has been furnished on behalf of the Revenue. However, the copies of reasons recorded as required before issuance of notice has been placed on record, which for all these cases are in identical terms. As a matter of illustration, we reproduce the reasons recorded in the case of Verili Weavers (P) Ltd. for the assessment year 1984-85:

"On going through the Income-tax case records of the assessee for the assessing year 1985-86 it is noticed that an amount of Rs.68,44,752 was claimed by the assessee from gross income to arrive at net taxable income under a claim of the assessee that the said amount was claimable as a deduction in the computation of net taxable income under the assessee's perception of ratio in the case of M/s. Lakhanpal National Ltd., decided by Hon'ble High Court of Gujarat (162 ITR) and it was not disallowed by the assessing officer while completing the assessment under section 143(3) of the I.T.Act under assessment order dated 14.11.86 perhaps for the reason that due diligence was not exercised by the assessing officer. The claim of above exemption of the assessee was prima facie wrong and by reason of

the said unsustainable claim of deduction put forward by the assessee and its not disallowance by the assessing officer has resulted in escapement of income from tax to the extent of the above said amount of Rs.68,44,752 in above said assessment year. In fact recently Hon'ble Supreme Court of India has held in the case of British Paints India Ltd. (188 ITR Vol. I page 45) that profit of a trade is a question of fact and it must be ascertained, as all facts must be ascertained, with reference to the evidence, and not on doctrines or theories.

In view of the above facts and circumstances of the case, I am satisfied that an amount of Rs.68,44,752 has escaped assessment on account of unsustainable claim of deduction for the above said amount put forward by the assessee, which did not form part of the audited profit and loss account of the assessee, and allowance of said claim of deduction for lack of application of due diligence on the part of the assessing officer, in the above said assessment year and therefore, the assessment is required to be reopened under section 147 of the I.T. Act to tax the escaped income and accordingly notice under section 148 of the I.T. Act is being issued.

Since a period of 4 years from the end of relevant assessment year has expired, the reasons for re-opening the assessment are being submitted to the C.I.T., Surat for perusal and necessary approval."

4. A bare perusal of the reason recorded by the assessing officer discloses that reason attributed for escapement of tax according to his belief is non exercise of due diligence by the assessing officer. The reason which led the assessing officer to believe that income of the petitioner has escaped assessment does not attribute any failure on the part of assessee to disclose truly and fully all material facts necessary for assessment either by not filing the return or not furnishing the requisite information. In fact from the perusal of the petition, the facts mentioned which have not been disputed, clearly goes to show the assessee did made a claim for deduction of Rs.18,61,987/- from the computation of his total income, with reference to proviso to Section 42B. His claim was that, the custom duty deduction can be claimed only on the basis of actual payment and not on the basis

of its accrual, consideration of liability to pay custom which has gone in considering value of closing stock which needs be allowed on the basis of liability already discharged. This question drew attention of the assessing officer. A query was made, assessee made reply and on considering that reply, the claim of the assessee was accepted. Neither there is any whisper in the reasons about failure on the part of the assessee to disclose truly and fully all material facts, nor from the facts admitted, it can be said that there has been any failure on the part of the assessee to disclose truly and correctly material facts relevant to holding belief by the Assessing Officer about escapement of income chargeable to tax the amount referred to in reasons recorded on the basis of which the belief about failure on the part of the assessee could be entertained by the assessing officer.

5. Proviso to Section 147 reads as under:

"Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under subsection (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.'

6. We have no hesitation in coming to the conclusion in the facts stated above, and in view of reasons disclosed by the assessing officer that the proviso is applicable to the facts of these petitions, and the notices issued in each of the case, after expiry of four years from the end of relevant assessment years 1984-85/1985-86 are beyond the period of four years from the end of that assessment year as envisaged under the aforesaid proviso and the assessing officer had no jurisdiction to issue notice under Section 147 in these cases after 31-3-89 in the case of assessment year 1984-85 and after 31-3-90 in the case of assessment year 1985-86. The initiation of action in each case under section 147 is clearly barred by time.

Accordingly these petitions succeed. Notices under Section 148 read with Section 147 in each of the cases above are quashed.

Rule is made absolute. There shall be no order as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)

#### SCHEDULE

- 1.SCA 3241/91 Vareli Weaves P. Ltd. v. Dy. CIT Surat
- 2.SCA 3242/91 Vareli Weaves P. Ltd. v. Dy. CIT Surat
- 3.SCA 3243/91 Kamla Weaving Facotry v. Dy. CIT Surat
- 4.SCA 3244/91 Praful Silk Factory v. Dy. CIT Surat
- 5.SCA 3245/91 Special Weaves Ltd. v. Dy. CIT Surat
- 6.SCA 3246/91 Special Weaves Ltd. v. Dy. CIT Surat
- 7.SCA 3247/91 Garden Silk Mills Ltd. v. Dy. CIT Surat
- 8.SCA 3248/91 Starlight Silk Mills P. Ltd. v. Dy. CIT
- 9.SCA 3249/91 Praful Silk Factory v. Dy. CIT Surat
- 10.SCA 3250/91 Garden Silk Mills Ltd. v. Dy. CIT Surat
- 11.SCA 3251/91 Kamla Weaving Factory v. Dy. CIT Surat
- 12.SCA 3252/91 Vareli Export P. Ltd. v. Dy. CIT Surat
- 13.SCA 3253/91 Vareli Export P. Ltd. v. Dy. CIT Surat
- 14.SCA 3254/91 The Prabhat Silk & Cotton Mills Co. Ltd.  
v. Dy. CIT Surat
- 15.SCA 3255/91 Prabhat Silk & Cotton Mills Co. Ltd.  
v. Dy. CIT Surat
- 16.SCA 3256/91 Starlight Silk Mills P. Ltd. v. Dy. CIT